

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

**TROY H. BRADFORD and GLORIA BRADFORD,
Individually and as Class Representatives on Behalf
Of All Similarly Situated Persons; and BOOKS, ETC.,
By and Through TROY and GLORIA BRADFORD,
Class Representatives on Behalf of All Those
Similarly Situated**

PLAINTIFFS

VS.

NO. 5-4075

**UNION PACIFIC RAILROAD COMPANY,
A Delaware Corporation, and J. L. GORDAN,
An Arkansas Resident**

DEFENDANTS

SECOND NOTICE OF REMOVAL

TO: M. David Karnas
Bellovin & Karnas, P.C.
100 North Stone Avenue, Suite 1105
Tucson, Arizona 85701

Judy H. Langley, Clerk
Miller County Circuit Court
412 Laurel, Room 109
Texarkana, Arkansas 71854

Roger W. Orlando
Orlando & Kopelman, P.C.
Decatur, County, Suite 400
315 West Ponce De Leon Avenue
Decatur, Georgia 30030

R. Gary Nutter
Dunn, Nutter & Morgan, LLP
State Line Plaza, Box 8030, Suite 6
Texarkana, Arkansas 71854-5945

Please take notice that the captioned case filed as Case No. CV-2005-385-2 in the Circuit Court of Miller, Arkansas has been hereby removed to the United States District Court for the Western District of Arkansas, Texarkana Division. Defendant Union Pacific Railroad Company, files this Second Notice of Removal and states, as grounds for removal, the following:
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1. On October 19, 2005 the Complaint in this action was filed in the Circuit Court of Miller County, Arkansas being case number CV-2005-385-2. A copy of the Summons and the Complaint, and First Amended Class Action Complaint (filed October 25, 2005 at 5:25 p.m.) which constitute all process, pleadings, and orders that have been served in such action to the date of this Second Notice of Removal, are attached to this Notice.

2. The Defendant was served with the original Complaint by certified mail received on October 24, 2005. The first Notice of Removal was filed within thirty (30) days after receipt by the Defendant of a copy of the Summons and Complaint and First Amended Class Action Complaint and was timely filed under 28 U.S.C. § 1446(b) and 1453(b).

3. At the time of the filing of the Complaint the Plaintiffs were citizens of the State of Arkansas.

4. At the time of the commencement of this suit and at the present time, Defendant, Union Pacific Railroad Company, was a Delaware corporation with its principal place of business located in the State of Nebraska. On October 27, 2005, Defendant received through counsel a First Amended Class Action Complaint which added J. L. Gordan¹ as a defendant. The First Amended Class Action Complaint alleges Mr. Gordan is an Arkansas resident. Plaintiffs' failure to allege the "citizenship" rather than the "residency" of Defendant Gordan fails to sufficiently plead facts to destroy diversity of citizenship. *See, e.g., Sanders v. Clemco Industries*, 823 F.2d 2141 (8th Cir 1987), *Pattiz v. Schwartz*, 386 F.2d 300 (8th Cir. 1968).

5. This action is a civil action in which Plaintiffs seek certification of a class action arising out of a rail car collision and explosion on October 15, 2005 in Texarkana, Arkansas. Plaintiffs seek to represent "thousands" of residents and Plaintiffs do not allege the citizenship of

¹ Defendant Union Pacific does not concede that it employs a J.L. Gordan.
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these “residents” who will make up the putative class and seek damages for personal injury, economic loss, property damage and other damages. Plaintiffs also seek medical monitoring and injunctive relief.

6. This action is a civil action in which this court has original jurisdiction under 28 U.S.C. § 1332(d)(2) and is one which may be removed to this Court by Union Pacific pursuant to the provisions of 28 U.S.C. § 1446 and 1453(b), in that it is a putative class action in which the amount in controversy exceeds the sum or value of 5 Million Dollars, exclusive of interest and costs, and in which at least one member of the putative class is a citizen of a state different from at least one defendant. Plaintiffs’ allegations regarding the class satisfy the criteria for diversity of citizenship set forth in § 1332(d)(2)(a). The amount in controversy requirement of § 1332(d)(2) is satisfied because the amount in controversy exceeds the sum or value of 5 Million Dollars, exclusive of interest and costs, according to the allegations of the Plaintiffs’ Complaint.

7. This action is one over which a federal district court has original jurisdiction in that there is complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332, and this case is removable under 28 U.S.C. § 1441(a) under the procedures set forth in 28 U.S.C. § 1446 and 1453(b).

8. Removing Defendant has given written Second Notice of this Removal to federal district court by filing copies of this Second Notice of Removal with the Circuit Court of Miller County, Arkansas, and by serving copies of this Second Notice of Removal to Plaintiffs’ attorneys.

WHEREFORE, Defendant, Union Pacific Railroad Company, gives notice that this case, as amended by the First Amended Class Action Complaint, has been removed from the Circuit

Court of Miller County, Arkansas, to the Federal District Court for the Western District of Arkansas, Texarkana Division.

Respectfully Submitted,

KEVIN A. CRASS (84029)
SCOTT H. TUCKER (87176)
2000 Regions Center
400 West Capitol Avenue
Little Rock, Arkansas 72201-3493
(501) 376-2011
Crass@fec.net
Tucker@fec.net

Attorneys for Defendant,
Union Pacific Railroad Company

BY: /s/ Kevin A. Crass
KEVIN A. CRASS

CERTIFICATE OF SERVICE

I, Kevin A. Crass, hereby certify that on November 1, 2005, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

- **R. Gary Nutter**
rgnutter@dnmlawfirm.com shartline@dnmlawfirm.com
- **Attorney for Plaintiffs**
-
- **Roger W. Orlando**
roger@orlandokopelman.com matt@orlandokopelman.com
- **Attorney for Plaintiffs**

I, Kevin A. Crass, hereby certify that on November 1, 2005, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, and that a copy of the document and Notice of Electronic Filing (NEF) were mailed, via FedEx delivery, to the following non CM/ECF participant:

M. David Karnas

Bellovin & Karnas, P.C.

100 North Stone Avenue, Suite 1105

Tucson, AZ 85701

Attorney for Plaintiffs

/s/ Kevin A. Crass

KEVIN A. CRASS